

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO**

TOMÁS CAMACHO,

Plaintiff,

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

CIVIL NO.: 19-1694 (MEL)

**OPINION AND ORDER**

Pending before the court is counsel Pedro G. Cruz Sánchez's ("Cruz") petition for attorney's fees pursuant to Title 46, United States Code, Section 406(b). ECF No. 26. On February 7, 2020, judgment was entered remanding this case to the Commissioner of Social Security for further administrative proceedings pursuant to the fourth sentence of Title 42, United States Code, Section 405(g). ECF No. 20. On May 19, 2020, the court granted Cruz's request for attorney's fees in the amount of \$1,703.58 pursuant to the Equal Access to Justice Act ("EAJA"), 28 U.S.C. §2412. ECF Nos. 21, 23.

On July 26, 2021, Cruz filed a motion for attorney's fees in the amount of \$5,019.50 pursuant to §206(b)(1) of the Social Security Act, 42, U.S.C. §406(b)(1). In said motion, Cruz stated that "the Plaintiff just recently sent us a copy of the NOA [Notice of Award] that was sent to him and to his lawyer at the administrative level dated November 26, 2020." ECF No. 26 at 2. Unfortunately, "recently" does not clarify whether Cruz received from the plaintiff a copy of the notice of award within fourteen days prior to Cruz's July 26, 2021 filing.

On September 18, 2021, Cruz filed an informative motion advising the court that on September 4, 2021, he received for the first time from the Commissioner of Social Security a Notice of Award which is dated May 16, 2020 and amended on November 26, 2020. ECF No.

32. The amended Notice of Award indicates that \$11,019.50 have been withheld, that is 25% of plaintiff's past-due benefits.

I have held that “a petition for attorney’s fees under Section 406(b) must be filed within fourteen (14) days of counsel receiving notice of the benefits award” and that “Federal Rule of Civil Procedure 54(d)(2)(B)’s filing deadline is tolled until the Commissioner of Social Security issues the notice of award and the attorney is notified of the same.” *Meléndez v. Comm’s of Soc. Sec.*, 18-1965 (MEL), 2021 WL 4485393, at 1-2 (citing *Sinkler v. Berryhill*, 932 F.3d 83 (2d Cir. 2019)). This approach of tolling the filing deadline until the notice of benefit awards is received by counsel in the handling of attorney’s fees requests pursuant to Section 406(b) in Social Security cases is not at odds with District Court of Puerto Rico Local Rule 54(b), nor with proposed District of Puerto Rico Local Rule 9(d)(2) which provides that a “party seeking attorney’s fees pursuant to 42 U.S. C. §406(b) shall have fourteen (14) days after counsel’s receipt of the original, amended, or corrected Notice of Award, whichever is latest, to file its request for attorney’s fees.” 03-MC-115, ECF No. 63-1.

Cruz should have clarified with precision how many days prior to his July 26, 2021 motion did he receive from the plaintiff a copy of the Notice of Award.<sup>1</sup> On the other hand, there is no good excuse for the Social Security Administration to have waited until September 4, 2021 to provide Cruz with the Notice of Award since Cruz is the attorney of record in the case pending before this court. This is particularly concerning taking into account that Cruz asked the Commissioner of Social Security twice, on September 14, 2020 and May 4, 2021, to send him a copy of the Notice of Award. ECF No. 26 (Ex. C, D). Under these circumstances, Cruz’s motion

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<sup>1</sup> Counsel is put on notice that in the future, failure to provide this information could result in his petition being denied.

for attorney's fees filed on July 26, 2021 in the amount of \$5,019.50 pursuant to §206(b)(1) of the Social Security Act, 42, U.S.C. §406(b)(1) will not be deemed untimely.

Once the EAJA fees of \$1,703.58 are subtracted from \$5,019.50, Cruz's net fees would amount to \$3,315.92. The sum of \$3,315.92 is approximately 7.5% of plaintiff's past due benefits of \$44,078. ECF No. 32-1. This is not unreasonable.

Therefore, Cruz's request for attorney's fees under Section 406(b) in the amount of \$5,019.50 is GRANTED. Of course, Cruz must return the \$1,703.58 award in EAJA fees.

IT IS SO ORDERED.

In San Juan, Puerto Rico, this 4th day of February, 2022.

s/Marcos E. López  
U.S. Magistrate Judge